to show that the accused pursued the deceased over a considerable period and stabbed him with a pair of scissors and from this injury the victim died. The evidence on this, to my mind, is sufficient for the Magistrate to commit the accused to trial on the charge of murder.

It appears to me that the learned Magistrate in this case was labouring under a misapprehension as to his duty when functioning as a Magistrate in a preliminary enquiry.

I am of the opinion that a *prima facie* case of murder under section 302 has been made out at the enquiry and for that reason I set aside the order of the Magistrate and direct him to draw a charge under section 302 of the Penal Code against the accused and to commit him for trial to the High Court.

Order accordingly.

Solicitors: *Tay Leong Siak & Co.*

ROSLAN BIN HAJI YAHYA v. PUBLIC PROSECUTOR

[R.Cr.J. (Gunn Chit Tuan J.) February 28, 1984]

[Kuala Lumpur – Selangor Criminal Revision No. 1 of 1984]

Criminal Law and Procedure – Sentence – Police Supervision – Discretion – Criminal Procedure Code (F.M.S. Cap. 6), s. 295 (i).

In this case the accused had pleaded guilty to the offence of theft of household crockery from his father's house. Accused was a drug addict. He had previously been convicted of theft of his father's wrist watch and sentenced to attend the drug rehabilitation centre.

The accused was sentenced to two years' imprisonment to be followed by one year's police supervision. The accused's father wrote to complain that the sentence was excessive.

Held: (1) neither the facts of this case nor the past record of the accused justified the order for police supervision;

(2) the power to impose police supervision should be sparingly resorted to and only in the most appropriate cases;

(3) the order for police supervision in this case should be set aside.

Case referred to:

(1) *Re Bakar bin Ahmad* [1959] M.L.J. 256.

CRIMINAL REVISION.

Appellant in person.

Phang Ah Hee (Deputy Public Prosecutor) for the Public Prosecutor.

Gunn Chit Tuan J.: The accused in this case was convicted of theft in a dwelling house under section 380 of the Penal Code. The facts, as admitted by the accused and accepted by the Magistrate, were that the accused was seen by his younger sister, the complainant in this case, looking for something in their house at about 9.00 a.m. on March 26, 1983. Later that day the complainant also saw her elder brother, that is the accused, leaving the house carrying a bundle wrapped with a piece of newspaper. The complainant suspected that there was a plate in the bundle and on checking their household crockery found that several plates were missing. She suspected that her brother must have taken those plates together with other pieces of crockery which were found missing. The total value of the crockery missing was about $30/- and as the complainant was afraid that the accused, who was a drug addict, must have sold the crockery, she went to the police station to make a report.

Two days later after investigations by the police the accused was arrested and the police recovered the missing plates and other pieces of crockery from three Malay women who had bought them from the accused. The accused pleaded guilty to a charge under section 380 of the Penal Code and was sentenced by the Magistrate's Court Rawang on May 14, 1985 to two years' imprisonment with effect from the date of arrest to be followed by one year's police supervision. The accused who was aged 28 had a previous conviction for a similar offence of theft in a dwelling house under section 380 of the Penal Code and was sentenced to 2 months' imprisonment by the Magistrate's Court Kuala Lumpur on January 15, 1981. The accused did not file a notice of appeal against sentence in the present case but I called for the records of proceedings before the Magistrate's Court, Rawang, after I received a letter from the accused's father who had complained that the sentence of two years' imprisonment to be followed by one year's police supervision was excessive in the circumstances of the case.

Although no party has a right to be heard before a Judge exercising his powers of revision, yet I granted permission for the accused and a deputy public prosecutor to appear and address the Court before I exercised my powers of revision under Chapter XXXI of the Criminal Procedure Code. The accused admitted that he had fallen a prey to the drug habit and had stolen his father's wrist watch for which offence he received his first conviction and sentence in 1981. He has then attended the drug rehabilitation centres at Bukit Mertajam, Penang, Besut, Trengganu, and Sungei Besi, Selangor, but unfortunately has still not been able to kick the drug habit as a result of which he had to steal and sell the plates and other crockery from his own home in order to raise money to buy drugs.

In my view neither the facts of this case nor the past record of the accused justified the order for police supervision and I would with respect agree with the following *dictum* of Rigby J. (as he then was) when His Lordship said in the case of *Re Bakar bin Ahmad*[1] as follows:-

"Police supervision should not be imposed by way of an additional punishment. Its sole object and only justification, as I understand it, is to ensure that in the interests of public security the Police are in a position to exercise some measure of control over the movements and activities of persons of known bad character – such as burglars, pickpockets and common thieves – who habitually and consistently lead a life of criminal dishonesty."

I also agreed with Rigby J. in that case that the power to impose police supervision is a measure that should be sparingly resorted to by Magistrates and then only in the most appropriate cases. In this case I would also point out that the powers contained in the following provisions of section 295(i) of the Criminal Procedure Code (F.M.S. Cap. 6) are not mandatory and that the Courts have a discretion in the circumstances of each case to decide whether or not to impose a sentence of police supervision in addition to any other punishment:-

"When a person having previously been convicted of an offence punishable with imprisonment for a term of two years upwards is convicted of any other offence also punishable with imprisonment for a term of two years or upwards–

(a) the High Court or a Sessions Court may direct that he be subject to the supervision of the police for a period of not more than three years commencing immediately after the expiration of the sentence passed on him for the last of such offences;

(b) a Court of a Magistrate may direct that he be subject to the supervision of the police for a period of not more than one year commencing immediately after the expiration of the sentence passed on him for the last of such offences."

The order for police supervision in this case was accordingly set aside by me and the accused need only serve the two years' imprisonment with effect from the date of arrest which I considered was already sufficiently severe in the circumstances of this case.

Order accordingly.

PUBLIC PROSECUTOR v. LIM BOON HOCK & ORS.

[O.Cr.J. (Yusoff Mohamed J.) November 20, 1984]

[Johore Bahru – Criminal Trial No. 8 of 1981]

Criminal Law and Procedure – Consent to prosecute – Amount of dangerous drugs stated therein – Amending charge to state lesser amount of the drugs – Public Prosecutor conducting prosecution – Whether consent valid.

Dangerous Drugs – Trafficking in raw opium – Plea of guilty – Substantial quantity of dangerous drugs – No mitigating factors – Death sentence – Dangerous Drugs Act, 1952, ss.39B(1) (a) & 39B(3) – Penal Code, s.34.

The three accused were charged with trafficking in dangerous drugs, to wit 38.8078 kg. of raw opium, contrary to section 39B(1) (a) of the Dangerous Drugs Act 1952. Before the charge was read the Deputy Public Prosecutor requested the court to decide on a preliminary point as he wished to reduce in the charge the amount of raw opium by 0.0001 kg, *i.e.* from 38.8079 kg. to 38.8078 kg. The main question in this case was whether the Public Prosecutor's original consent under section 39B(3) of the Act was valid. Eventually, the 1st accused pleaded guilty to the amended charge which was withdrawn against the 2nd and 3rd accused.

Held: (1) the consent was valid as the Public Prosecutor himself conducted the prosecution. It was given for a larger amount of dangerous drugs and in any event the difference in weight was so minimal as to derogate the essence of the offence of trafficking in dangerous drugs to other offences in the Act. The difference did not prejudice the accused;

(2) in view of the substantial quantity of dangerous drugs involved, the 1st accused had no mitigating factors in his favour and should be sentenced to death.

Editorial Note: The 1st accused has appealed against the above decision in F.C.C.A. No. 47 of 1984. A Notice of Appeal was filed on November 5, 1984.

Case referred to:

(1) *Public Prosecutor* v. *Oie Hee Koi* [1968] 1 M.L.J. 148, 154.